

**REMARKS**

Applicants submit these Remarks in reply to the final Office Action mailed January 6, 2010. Before this response, claims 1-9, 11, 12 and 27-35 were pending, of which claims 1, 11, and 12 were independent. In this reply, Applicants amend independent claims 1, 11, and 12. These amendments find support, for example, at page 14, line 25 through page 17, line 30 and figure 6 of the specification. After these amendments, claims 1-9, 11, 12, and 27-35 are currently pending, of which claims 1, 11, and 12 are independent.

In the Office Action, the Examiner took the following actions:

- a) rejected claims 1-9, 11-12, and 27-35 under 35 U.S.C. § 112, second paragraph, as being indefinite;
- b) rejected claims 1-9, 11, 12 and 27-35 under 35 U.S.C. § 103(a) as being obvious over the following combinations:
  - i. claims 1-3, 5, 9, 11, 12, and 27-35 over U.S. Patent No. 6,834,182 ("*Fu*") in view of European Patent No. EP 1233273 ("*Gigliotti*"), and U.S. Patent No. 6,954,620 ("*Rotta*");
  - ii. claims 4 and 6 over *Fu*, *Gigliotti*, *Rotta* and further in view of U.S. Patent No. 5,756,967 ("*Quinn*"); and
  - iii. claims 7 and 8 over *Fu*, in view of *Gigliotti* and *Rotta*, and further in view of U.S. Patent No. 6,961,368 ("*Dent*").

Applicants respectfully traverse the pending rejections for at least the reasons discussed below.

**A. Claim Rejections under 35 U.S.C. § 112, second paragraph**

The Examiner rejected claims 1, 11, and 12 under 35 U.S.C. § 112, ¶ 2 for reciting “the communication module is configured to control an intensity of the at least one RF power signal input to the antenna.” Office Action at 2. According to the Examiner, the specification describes that “it is the microprocessor 16 and/or the control module that controls the RF power injected into the antenna.” Office Action, ¶ 2 (citing specification page 7, lines 23-27). While Applicants do not acquiesce to the Examiner’s characterization, to expedite prosecution they have amended independent claim 1 to recite, among other things, “a control module configured to control, in response to a power control command received from the remote processing facility, an intensity of the at least one RF power signal input to the antenna.” Applicants have amended independent claims 11 and 12 in similar fashion.

Because claims 1, 11, and 12, as presently amended, overcome the basis of the pending Section 112 rejections, Applicants submit that this rejection should be removed.

**B. Claim Rejections Under 35 U.S.C. § 103(a)**

Applicants respectfully traverse the 35 U.S.C. § 103(a) rejections of claims 1-9, 11, 12 and 27-35, because the final Office Action fails to establish a *prima facie* case of obviousness with respect to the amended claims. In order to establish a *prima facie* case of obviousness, the record must “include[] findings of fact concerning the state of the art and the teachings of the references . . . .” The Manual of Patent Examining Procedure (“M.P.E.P.”) § 2141(II) (8th ed., rev. 7, July 2008) (relying on *KSR Int’l Co. v. Teleflex Inc.*, 127 S. Ct. 1727, 82 U.S.P.Q.2d 1385 (2007), and confirming the legal framework established by *Graham v. John Deere Co.*, 383 U.S. 1, 17, 148

U.S.P.Q. 459, 467 (1966)). Moreover, “[o]nce the findings of fact are articulated, [the rejection statement] must provide an explanation to support an obviousness rejection under 35 U.S.C. [§] 103.” *Id.* If it is found that the prior art references fail to disclose all of the subject matter recited in a claim, the rejection statement “must explain why the difference(s) between the prior art and the claimed invention would have been obvious to one of ordinary skill in the art.” M.P.E.P. § 2141(III).

Applicants respectfully traverse the rejections under § 103(a) at least because *Fu*, *Gigliotti*, *Rotta*, *Quinn*, and *Dent*, whether they are viewed individually or in combination, fail to disclose or render obvious all of the subject matter recited in Applicants’ amended claims.

i. **Amended Independent Claims 1, 11, and 12**

Applicants’ independent claim 1, as amended, calls for a combination including, for example, “a communication module . . . configured to receive a power control command from [a] remote processing facility, wherein the power control command is based on at least cartographic information about [a] given area.” Amended independent claims 11 and 12, although different in scope, recite similar subject matter. A *prima facie* case of obviousness may not rest on the art of record at least because none of *Fu*, *Gigliotti*, *Rotta*, whether taken singly or in combination, discloses or suggests at least “receiv[ing] a power control command from [a] remote processing facility, wherein the power control command is based on at least cartographic information about [a] given area,” as claimed.

In the final Office Action, the Examiner acknowledges that *Fu* fails to disclose a communication module configured to receive a power control command from a remote

processing facility for controlling the intensity of at least one RF power signal input to an antenna. Final Office Action at 3. However, the Examiner relies on a combination of *Gigliotti* and *Rotta* for its alleged disclosure of this feature missing from *Fu*. Final Office Action at 4.

While Applicants disagree with the Examiner's characterizations of the prior art, they have amended independent claims 1, 11, and 12 to further recite that the power control command received from the remote processing facility is "based on at least cartographic information about [a] given area." The Examiner's cited references, taken singly or in combination, do not hint or suggest at receiving a power control command that is "based on at least cartographic information about [a] given area," as recited by Applicants' amended independent claims.

As noted on pages 11-12 of Applicants' reply dated September 4, 2009, *Gigliotti* does not receive power control commands at all, but rather merely receives commands from a remote station to adjust certain monitoring parameters including, e.g., "the frequency range, a threshold level, or other commands for maintaining the monitoring device in a standby status." *Gigliotti* at paras. 0028 and 0030; *see also* final Office Action at 4. Moreover, notwithstanding the fact that the commands in *Gigliotti* relate to controlling a power monitoring procedure and not power control, nothing in *Gigliotti* indicates that these monitoring commands are "based on cartographic information about [a] given area." Furthermore, *Rotta* fails in the same respect because it merely discloses a "watchdog circuit" that adjusts the antenna power signal when the power level exceeds a predetermined maximum level. *See Rotta.*, col. 2, lines 37-39. Accordingly, *Rotta* also is silent regarding receiving a power control command that is

“based on cartographic information about [a] given area,” as recited by Applicants’ independent claims.

Because *Fu*, *Gigliotti*, and *Rotta* each fails to disclose at least “a communication module . . . configured to receive a power control command from [a] remote processing facility, wherein the power control command is based on at least cartographic information about [a] given area,” there is no possible combination of these references that can anticipate or render obvious every element recited in independent claims 1, 11, and 12, as amended. Accordingly, a *prima facie* case has not been established. Furthermore, each of claims 2-9 and 27-35 depend either directly or indirectly from one of amended independent claims 1, 11, and 12 and should be allowable for at least the same reasons. Accordingly, Applicants respectfully request reconsideration and withdrawal of the 35 U.S.C. § 103(a) rejection of claims 1-9, 11, 12, and 27-35.

ii. **Dependent Claims 4 and 6**

In the Office Action, claims 4 and 6 were rejected under 35 U.S.C. § 103(a) as being unpatentable over *Fu* in view of *Gigliotti* and *Rotta* and further in view of *Quinn*. Claims 4 and 6 depend from amended independent claim 1, which is allowable for at least the reasons outlined above. *Quinn*, which was cited only for its purported disclosure of a device for averaging subsets of samples, does not remedy the deficiencies of *Fu*, *Gigliotti*, and *Rotta* outlined above. Therefore, the 35 U.S.C. § 103(a) rejection of dependent claims 4 and 6 should be withdrawn.

iii. **Dependent Claims 7 and 8**

In the Office Action, claims 7 and 8 were rejected under 35 U.S.C. § 103(a) as being unpatentable over *Fu* in view of *Gigliotti* and *Rotta*, and further in view of *Dent*. Claims 7 and 8 depend from amended independent claim 1, which is allowable for at least the reasons outlined above. *Dent*, which was cited only for its purported disclosure of a plurality of measuring channels and a switch for selectively feeding the output signal of any of the measuring channels, does not remedy the deficiencies of *Fu*, *Gigliotti*, and *Rotta* outlined above. Consequently, the 35 U.S.C. § 103(a) rejection of dependent claims 7 and 8 cannot be maintained and should be withdrawn.

**Conclusion**

The preceding remarks are based only on the arguments in the Office Action, and therefore do not address patentable aspects of the invention that were not addressed by the Examiner in the Office Action. The claims may include other elements that are not shown, taught, or suggested by the cited art. Accordingly, the preceding remarks in favor of patentability are advanced without prejudice to other possible bases of patentability.

In view of the foregoing amendments and remarks, Applicant respectfully requests reconsideration and reexamination of this application and the timely allowance of the pending claims.

Please grant any extensions of time required to enter this response and charge any additional required fees to our deposit account no. 06-0916.

Respectfully submitted,

FINNEGAN, HENDERSON, FARABOW,  
GARRETT & DUNNER, L.L.P.

Dated: April 6, 2010

By:   
\_\_\_\_\_  
Stephen E. Kabakoff  
Reg. No. 51,276  
(404) 653 6477